

## THE NSLI: A TEN MONTH UPDATE

by James T. Gray,  
NSLI Assistant Director

Since the NSLI five-year anniversary update which appeared in the August/September 1994 edition of **For The Record**, the National Sports Law Institute of Marquette University Law School has continued to be active in developing and maintaining a wide array of programs. The following ten-month summary provides an update concerning the full scope and breadth of Institute activities.

### Marquette Sports Law Journal

Under the leadership of Editor-In-Chief, Paul M. Anderson, four issues of the Journal have been published during the 1994-95 academic year. All of the articles which appeared in the Journal addressed important issues facing amateur and professional sports. Articles included:

- The representation of professional athletes
- The implementation of athlete drug testing procedures
- Title IX as applied to college athletics
- The legal and economic aspects of stadium and arena financing
- Player discipline in team sports
- Legal regulation of sports violence
- The legal and social aspects of college mascot name changes
- First Amendment issues pertaining to prayer in the locker room
- The relationship between the law, new technology and NFL television policy
- A legal review of the Greek sports federation
- AIDS testing in professional sports
- The legalities of the continued use of "opt out" clauses in NBA contracts
- Major League Baseball's labor problems.

Two new features were added to the Journal over the course of the last 16 months: First, an index was implemented in order to help our readers identify useful articles and videotapes published and produced by the NSLI; second, a book review has appeared in recent Journal issues to acquaint members with new sports law and sports business

books and publications.

The NSLI in April 1995 hosted the second annual Marquette Sports Law Journal dinner. This program honored and thanked all of the current editors and members of the Journal for their outstanding work and dedication over the last academic year. Approximately 40 Marquette Law School alumni attended the dinner. This alumni interest will ensure that the Journal continues to be a leader in sports law education.

During the dinner the new Journal editorial board was announced by Professor Charles W. Mentkowski, chairman of the NSLI Board of Advisors. The Journal editors for the 1995-96 academic year are John Gillard, Editor-In-Chief, Jeff Aleman, Executive Editor, Kevin L. Ferguson, Lead Articles Editor, and Greg Heller, Student Articles Editor.

### Joseph E. O'Neill Award & Scholarship

This award was established to honor the memory of Milwaukee Bucks general counsel, Joseph E. O'Neill, as well as to recognize competency and ethical conduct in amateur and professional sports. This award was established by the O'Neill family, the Milwaukee law firm of Davis & Kuelthau, of which O'Neill was a partner, and the NSLI soon after Joseph O'Neill's death in October, 1992.

The first recipient of this award was sports attorney and NSLI Board of Advisors member, A. Jackson Mills. During the second annual **Sports Venues, Revenues & Values conference**, to be held in October, 1995, the second O'Neill award will be bestowed upon Brian Burke, Senior Vice President & Director of Hockey Operations of the National Hockey League. In addition, the first Joseph E. O'Neill scholarship will be awarded to Paul M. Anderson for sports ethics research. All O'Neill scholarship research will be published in the Marquette Sports Law Journal and **For The Record** during the 1995-96 academic year.

### Risk Management

In 1992, the NSLI implemented the "Reduce Your Risk" high school risk management program. This program, the first of its kind in the United States, addressed high school athletics from a legal, medical, ethical, insurance and rule-making perspective.

As a result of the program's success, the legal, insurance, and ethical aspects of the "Reduce Your Risk" program were incorporated into the Regulation of Amateur Athletics legal curriculum taught by Professor Greenberg. For the second year in a row, the NSLI, in conjunction with Marquette University's Service Learning Project, provided law students with the opportunity to apply their academic risk management knowledge in a practical setting and teach Milwaukee area high school coaches, athletic directors and administrators.

The way the service learning aspect of the "Reduce Your Risk" program works is that two law students are selected for each high school in the program to prepare a 30-minute risk management oral presentation and provide written materials which track their remarks. The students focus on how the law, ethics and insurance affect high school athletics in the areas of supervision, instruction, transportation, medical prevention and treatment of injuries, and athletic code of conduct issues.

In addition, some law students taught high school students about the legal aspects of athletic codes of conduct which included the use of minimum

academic requirements, hair cut rules and dress codes for athletic participation, as well as the limits of using high school and college athletes in sports marketing campaigns.

During the 1994 and 1995 spring semesters, the NSLI arranged and organized twelve law student service learning presentations in the Greater Milwaukee area which included the following high schools: Milwaukee Wisconsin Lutheran, West Allis Nathan Hale, Kenosha Bradford, Milwaukee South Division, Cudahy, Glendale Nicolet, Racine Prairie School and Milwaukee Messmer. In addition, law students addressed the 1994 annual meeting of the Wisconsin Independent Schools Athletic Directors Association and were part of the Wisconsin Interscholastic Athletic Association coaching certification program in Milwaukee.

### Sports Venues, Revenues & Values

The NSLI and Deloitte & Touche will co-sponsor the second annual Sports Venues, Revenues & Values conference on October 12, 13 and 14, 1995 at the Pfister Hotel in Milwaukee. In addition, Ellerbe Becket, a prominent architectural firm, and SMG, a national sports facilities management company, will serve as 1995 conference associate sponsors. This conference will analyze stadium and arena leases from a legal, economic and public policy perspective. The 1994 conference had attracted 250 attendees from across the United States, Canada and Australia.

The second annual **Sports Venues, Revenues & Values** conference will provide attendees with an update of the 1994 materials and, in addition, provide information on minor league leases, sports authorities, stadium and arena public referenda, and a practical "how to" presentation on the negotiation of stadium and arena leases. Conference presenters will also address the financial and economic aspects of professional sports, the public policy and public relations aspects of stadia and arenas, trends in sports facilities contracts, concessions agreements and how to finance stadia and arenas.

Further details on the 1995 conference, please see pages 3-4.

### Sports Law Practice

This two-volume textbook has sold over 1,000 copies worldwide over a two-year period and provides practical commentary of the American professional sports industry. Published in 1992, Volume One of Sports Law Practice has 1,300 pages of materials; Volume Two contains 700 pages of sports industry sample contracts. Since its initial publication, Professor Greenberg has also published two supplements, updated into one volume each year, to assist sports law practitioners.

### For The Record & For The Record EXTRA

**For The Record** is the first newsletter to contribute timely sports law, sports business and sports ethics commentary on a bi-monthly basis. **For The Record** has examined the O.J. Simpson murder case, the parity of coaching contracts between men and women college basketball coaches, the viability of a tax plan for Major League Baseball, the legal and ethical aspects of contracts with equipment companies, the legal aspects of foreign athletes playing in Japan, sports trademarks and international sports, AIDS and athletics, and race issues confronting professional sports.

**For The Record EXTRA** was created to provide sports law, sports business and sports ethics information to radio, television and print sports

media. Since 1991, the editor of this publication is free-lance sports writer Donald Watz. In addition, law school alumni such as James Green, Class of 1991, Peter Faust, Class of 1994, and Marquette sophomore journalism major Erik Brooks, serve as regular contributors. **For The Record EXTRA** has addressed the continued use of the Major League Baseball antitrust exemption, a review and listing of sports business newspaper writers across the United States and a review of the 1995 NFL draft player/agent relationships.

### NSLI Lecture Series

During the 1995 Spring Semester, the NSLI and Marquette University's Office of Multicultural Concerns hosted a lecture presented by Professor Kenneth Shropshire at the Wharton Business School of the University of Pennsylvania. Professor Shropshire's lecture was entitled **In Black and White: Race and Sports In America**. During his visit to the Law School he was interviewed by the Milwaukee Journal and WMCS-AM 1290. Professor Shropshire also addressed approximately 80 Milwaukee area attorneys, educators, students and Marquette Alumni as well as deliver special presentations to Professor Williams' employment discrimination class and Professor Greenberg's sports law class.

The NSLI also hosted a lecture presented by Professor Simon Gardiner of the Anglia Polytechnic University in Chelmsford, Essex, England. Professor Gardiner discussed the legal regulation of sports violence in European soccer matches. In addition, he had published a law review article on sports violence which appeared in Volume 5, Number 2 of the Marquette Sports Law Journal. Professor Gardiner also conducted extensive sports law research at the NSLI offices which he plans to share with his British sports law colleagues.

### Sports Law Internship Program

Each academic semester the NSLI provides internship opportunities for second and third year Marquette University Law School students. During the 1995 Spring Semester four students interned at

the Commissioner's Office of the Great Midwest Conference, Miller Brewing Company, Milwaukee Brewers Baseball Club, and the Milwaukee Public Schools. Internship experiences ranged from NCAA infraction appeals, coaching contract disputes, high school athletics insurance issues as well as sports industry television and advertising contracts.

### Sports Law Commentary

Over the last ten months, the NSLI has provided sports law research support for sports writers and sports broadcasters as well as commentary in many national newspapers, magazines and radio stations. Professor Greenberg and Professor Gray have addressed stadium and arena lease issues in Denver, Pittsburgh, Milwaukee, Fort Lauderdale, Providence, Houston and Montreal, Canada. In addition, the media have contacted the NSLI regarding Major League Baseball's antitrust exemption and the players' strike, Baylor University's firing of their basketball coach for academic irregularities, the power of sports leagues to fine coaches for their criticism of an official's decision, college athlete eligibility disputes and the intricacies of the NBA salary cap.

### Summary

The foregoing illustrates that the educational and informational functions of the National Sports Law Institute continue to increase and improve. The NSLI's reach extends to law schools, law students, amateur athletics (participants, coaches and administrators) both at the high school and college level, professional sports, governmental bodies, the sports media and the general public.

The National Sports Law Institute continues to accomplish its goal of promoting the development of ethical practices in all phases of amateur and professional sports by its continuing informational and educational programs.

## GENDER DISCRIMINATION IN PROFESSIONAL SPORTS: A LEGAL PERSPECTIVE

by Kevin L. Ferguson,  
Lead Articles Editor, Marquette Sports Law Journal

As organized professional sports developed in the United States, it was solely a male domain. However, highly skilled female athletes — attempting to increase their competitive opportunities— sought to play on male teams. As women encroached upon the all-male competitions, sports organizations began to implement rules, such as licensing requirements, in order to prevent female athletes from competing with men.

### Female Athletes and Licensing Requirements

In 1955, the denial of a license to a female athlete was at issue in *Hesseltine v. State Athletic Commission*.<sup>1</sup> Rose Hesseltine was denied a wrestling license by the Illinois State Athletic Commission (ISAC) without a hearing. In holding that the state legislature did not grant the ISAC the authority to enact rules which prevented women from wrestling, the Illinois Supreme

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Court avoided the constitutional sexual discrimination issue and decided the case on procedural grounds.

According to the court, the scope of the ISAC wrestling regulations were limited to the qualifications of applicants who wanted to obtain an exhibitor's license and did not address the qualifications of individuals applying for a competitor's license. Consequently, the ISAC did not have any legal authority for denying Hesseltine a wrestling license, and the Illinois Supreme Court ordered the ISAC to issue her one.

In 1956 the Oregon Supreme Court confronted the constitutional sexual discrimination issue in *State v. Hunter*.<sup>2</sup> Hunter challenged an Oregon law that made it a crime for females to participate in wrestling competitions and exhibitions. The court took judicial notice of the physical differences between men and women and held that women could be excluded from male athletic events because of these physical differences. In support of their holding, the court pointed out that many laws, particularly in labor and industry, recognized gender physical differences and that many other jurisdictions upheld these laws "as a proper exercise of the police power in the interests of public health, safety, morals and welfare."<sup>3</sup>

The licensing requirement was also at issue in professional thoroughbred racing in spite of the fact that women had successfully competed in steeplechase and harness racing events. In 1967, the Maryland Racing Commission

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<sup>1</sup> 126 N.E.2d 631 (Ill. 1955).

<sup>2</sup> 300 P.2d 455 (Or. 1956).

<sup>3</sup> *Id.* at 457.